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Refugee Reports

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CONGRESS, ADMINISTRATION OFFER LEGISLATIVE RESPONSES TO SOVIET REFUGEE SURGE

As Soviet applications for refugee admission to the United States continue to set new records with each passing month, Congress and the Bush Administration have responded with a flurry of legislative proposals in a hurried search for some workable combination of numbers, funding, and admissions policies.

Nearly 10,000 Soviet citizens every month--predominantly Jews, Armenians, and Christian Pentecostals--are now applying for U.S. resettlement, creating growing backlogs and processing delays in Moscow and in Rome. Government and private refugee agency officials report that the current allocation for Soviet refugee admissions in FY 89 will be exhausted before the end of April, along with the federal funds available for their resettlement.

There seems to be general agreement among many members of Congress, Administration officials, and refugee advocacy groups that additional numbers and money are needed, and may be available within a few weeks. But the question generating the most debate and the least consensus is how many of the Soviet applicants are eligible for refugee status.

Meese Memo Signals Policy Shift on Soviet Processing

At the heart of the controversy on Soviet status is a policy change made last year by the U.S. government that was first confirmed in an August 4, 1988 letter from then-Attorney General Edwin Meese to Lt. General Colin Powell, National Security Council advisor. "Changes must be made in our Soviet refugee admissions program," Meese wrote. "Current practices...appear not to conform with the requirements" of the Refugee Act of 1980. Meese directed that the Immigration and Naturalization Service (INS) begin a transition, in conjunction with the Department of State, to "the proper statutory processing of Soviets."

The changes essentially involved ending the practice of according presumptive refugee status to all Soviet applicants, and instead, shifting to case-by-case determinations of a "well-founded fear of persecution," which is the norm for U.S. refugee admissions under the 1980 law. Until 1988, INS

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This issue of Refugee Reports, in its entirety, focuses on the U.S. response to recent increases in the numbers of people seeking asylum or resettlement in the United States. Court Robinson examines Congressional and Administration responses to the recent surge of Soviet Jews, Armenians, and Pentecostals trying to emigrate.....1

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officials have said, approval of Soviet refugee applicants had been "virtually automatic."

The transition was completed by October, and in the first six months of FY 89, a total of 4,919 Soviets have been denied refugee status out of a total of 18,487 interviewed, according to a report from the General Accounting Office (GAO).

In Rome, where most Soviet Jews and Christian Pentecostals are interviewed--having left the Soviet Union with Israeli immigration visas--the overall denial rate for FY 89 is 15 percent, but has fluctuated widely. The GAO study of Soviet refugee processing reported a denial rate of 11 percent in January, 19 percent in February, and rising to 36 percent in March.

In Moscow, where most of the refugee applicants are Soviet Armenians, the denial rate has climbed from 45 percent in January to 71 percent in February and 85 percent in March. Overall, 61 percent of Moscow applicants have been denied refugee status in FY 89, according to the GAO report.

Morrison Calls a Hearing "The Administration's response to this unprecedented situation" of rapidly expanded Soviet emigration "has been hasty, ill-advised, and inartfully executed," wrote Rep. Bruce A. Morrison (D-Conn.), new chairman of the House Subcommittee on Immigration, Refugees, and International Law, in a letter to Attorney General Dick Thornburgh. "Such sudden shifts in policy raise disturbing questions regarding the integrity of our entire refugee (and asylum) process," Morrison said.

In an April 6 hearing called by Morrison, INS Commissioner Alan Nelson defended the changes, saying that, despite the rejections, "absolutely no Soviet seeking relief is forced to return to the USSR." Moreover, while Soviet processing has been brought in line with a "worldwide uniform standard for the adjudication of refugee claims," Nelson said, U.S. policy still preserves several "special considerations" for Soviet emigres, including:

1. Maximum Entry: Any Soviet denied admission as a refugee is allowed entry as a parolee, under the authority of the Attorney General.

2. "Priority 6" Processing: Current U.S. policy provides admission to all Soviet refugees, regardless of family, employment, or other links to the United States. "In virtually every other area of the world," Nelson said, "U.S. refugee processing is limited to Priority 1 through Priority 5, those with ties to the U.S. by family, education, or employment."

3. "Freedom of Choice": Despite the fact that they leave the Soviet Union with Israeli immigration visas and are offered immediate Israeli citizenship, Soviet Jews are allowed to opt for resettlement in the United States. "Elsewhere, and under normal procedures," said Nelson, "such 'offers of firm resettlement' are bars against further consideration for the U.S. refugee program." Fewer than 5 percent of Soviet Jews currently are proceeding to Israel.

In his testimony before the House Subcommittee, Ambassador Jonathan Moore, U.S. Coordinator for Refugee Affairs, acknowledged that parole status was "inadequate", in that it provided no statutory mechanism for adjustment to permanent resident status and citizenship. On April 5, the Administration sent proposed legislation to Congress to establish a new category of "special immigrant," which Moore said would give the United States "the flexibility to admit for permanent resettlement persons of humanitarian and foreign policy concern who do not qualify under current immigrant or refugee provisions."

The proposed legislation establishes a five-year period during which up to 30,000 special immigrant visas each year could be allocated to groups designated by the President following "appropriate consultation" with Congress. These special visa numbers would not count against normal immigration quotas.

"Persons admitted under this category would be placed on a track for consideration for U.S. citizenship," said Thornburgh when he announced the draft legislation. Moreover, he said, "refugee applicants denied refugee status, but admitted to the United States under parole status between August 15, 1988 and September 30, 1989, also would be eligible for consideration

ADMINISTRATION PROPOSALS TO RESPOND TO INCREASED SOVIET EMIGRATION IN FY 89

NUMBERS

In the context of emergency consultations with Congress, the Administration has proposed to add 28,500 fully-funded new numbers to the worldwide admissions ceiling in FY 89, with the following new regional ceilings:

	Proposed Ceilings	Current Ceilings	Increase
East Asia			
First Asylum	28,000	27,000	1,000
Orderly Departure Program	22,000	19,500	2,500
Subtotal	50,000	46,500	3,500
Eastern Europe/Soviet Union			
Soviet Union ex Rome	35,200	14,000	21,200
Soviet Union ex Moscow	8,300	5,000	3,300
Eastern Europeans	6,500	6,500	0
Subtotal	50,000	25,500	24,500
Near East/South Asia	7,000	6,500	500
Latin America/Caribbean	3,500	3,500	0
Africa	2,000	2,000	0
TOTAL	112,500	84,000	28,500

FUNDING

The Administration has submitted a request for supplemental appropriations, calling for $85 million to cover State Department admissions costs for 28,500 people in FY 89. This includes the 22,500 proposed new numbers as well as 6,000 admissions slots that previously had been "semi-funded."

The Administration has requested an additional $15 million for "critical refugee assistance needs in Africa and Southeast Asia."

The Administration is not requesting supplemental funds to cover domestic resettlement costs. Rather, it has proposed taking $21.9 million from the line item for cash/medical assistance and state administrative costs in the Office of Refugee Resettlement budget and transferring that amount to the voluntary agency matching grant program. Such a move would reduce the period of federal reimbursement to states for refugee cash and medical assistance from 24 months to about 18 months.

STATUS

The Administration has offered legislation to create a new "special immigrant" category that would permit the U.S. government, following consultations with Congress, to admit up to 30,000 additional people each year for "humanitarian, foreign policy reasons." In the meantime, the Administration will continue to offer public interest parole to all Soviet applicants in Rome and Moscow who are rejected for admission as refugees.

for U.S. citizenship."

Armenians Accept Non-Refugee Status for Some, Jews and Pentecostals Call for Presumptive Eligibility Ross Vartian, executive director of the Armenian Assembly of America, supported the idea of a new "special immigrant" category for Soviet Armenians, saying that "it seems to be an appropriate course of action." He specifically endorsed the retroactive adjustment of status for parolees already in the United States, calling parole "problematic at best."

As of March 31, only 460 of the 2,846 people denied refugee status in Moscow had accepted an offer of parole, the GAO report said.

U.S. representatives for Soviet Jews and Pentecostals, on the other hand, insist that refugee status should be available to those two groups on a presumptive basis. "The denials represent a policy change that is unsupported by the Refugee Act," said Rabbi Ben Zion Leuchter, president of the Hebrew Immigrant Aid Society (HIAS), "and unwarranted by the facts of Jewish experience in the Soviet Union and the claims of Soviet Jews to a well-founded fear of persecution."

"Evidence of persecution against Pentecostals and other religious minorities in the Soviet Union is voluminous and compelling," said Dr. John H. White, president of the National Association of Evangelicals, "and as such, supports a presumption that they have a well-founded fear of persecution."

Christian and Jewish agencies in the United States--including HIAS, the American Jewish Committee, the Council of Jewish Federations, World Relief, the U.S. Catholic Conference/Migration and Refugee Service, and the Lutheran Immigration and Refugee Service (LIRS)--have urged INS to return to the practice of presuming that Soviet Jewish and Pentecostal applicants are refugees unless the INS uncovers evidence that clearly shows otherwise.

These groups have supported legislation introduced by Morrison (H.R. 2022) that would designate Jews and Evangelical Christians in the Soviet Union as "categories of aliens targeted for persecution." The bill further states that all aliens who belong to the categories established shall be considered "as subject to persecution without the need to provide independent or additional evidence." (See chart on page 3.)

The Morrison bill provides that any categories established under the act would apply through September 30, 1990. Sen. Frank R. Lautenberg (D-N.J.) is expected to offer a similar bill in the Senate, but with a sunset date of September 30, 1991.

Nelson called the bill "unsound" and "somewhat short-sighted." He said he believes that "it would be unwise to create a separate refugee program for any nationality or for subgroups within a nationality" and "would be a contradiction of the letter and spirit of the Refugee Act of 1980."

Similarly, Moore said, "We do not favor legislation that would establish a presumption or confer automatic refugee eligibility on a particular group or groups of Soviet applicants."

The private groups supporting the Morrison bill, and even Morrison himself, have said that legislating refugee status for specific groups is not the preferred course of action.

"I hope this legislation will be rendered unnecessary," Morrison said. "Attorney General Thornburgh can solve the problem with the stroke of a pen. But if the Administration is unwilling to move, this legislation will do it for them."

"Clearly there are people trapped in a process that is not of their making," said Roger Winter, director of the U.S. Committee for Refugees, "and that ought to be resolved in a sensitive and humane way. But I do not believe that a reversion to nationality-specific language in the law itself is a desirable course to pursue."

Such a move would "Balkanize the Refugee Act of 1980," he said, and create a situation in which "resources and admissions numbers will tend to be channelled to those with a politicized constituency in this country."

"If status is to be legislated," Winter said, "Congress should give consideration to several other less visible, perhaps even more vulnerable groups." He named Jews and Bahai's in Iran, Iraqi Kurds, Cambodian civilians under Khmer Rouge control, black South Africans not affiliated with liberation movements, and victims of torture and political prisoners throughout the world.

Morrison, Lautenberg Also Focus on ODP

CONGRESSIONAL PROPOSALS TO RESPOND TO INCREASED SOVIET EMIGRATION IN FY 89

Rep. Bruce A. MORRISON (D-Conn.): H.R. 2022

- Requires the Attorney General, in consultation with the Secretary of State and U.S. Coordinator for Refugee Affairs, to identify and establish (1) categories of aliens who are or were targets of persecution in the Soviet Union, and (2) categories of aliens who are or were targets of persecution in Indochina.
- Specifies that all aliens who belong to the categories so established shall be considered subject to persecution without the need to provide independent or additional evidence.
- Declares that, with respect to the Soviet Union, Jews and Evangelical Christians shall be deemed two categories of aliens targeted for persecution.
- Allows an alien who falls within categories established by this act, or by the Attorney General pursuant to this act, to reapply for refugee status if such alien was denied refugee status between August 15, 1988 and the date of enactment.
- Categories established by this act will apply from the date of enactment through September 30, 1990.
- Allows aliens who were nationals of the Soviet Union, Vietnam, Laos or Cambodia who were paroled into the United States after being found ineligible for refugee status to adjust their status to that of a refugee.
- Specifies that the number of such adjustments shall not be deducted from any refugee ceiling.

Sen. Frank R. LAUTENBERG (D-N.J.):

- This bill, which has not yet been introduced, will be similar to H.R. 2022, except that it requires categories to be maintained through September 30, 1991.

Rep. Howard L. BERMAN (D-Calif.): H.R. 1605

- Authorizes the admission of an additional 28,000 refugees in FY 89 with the following regional allocations: 19,000 for refugees from the Soviet Union, 5,500 for the Orderly Departure Program from Vietnam, 2,000 for Eastern Europe and the Soviet Union, 1,000 for East Asia, First Asylum, and 500 for the Near East.
- Transfers $50 million from SLIAG (State Legalization Impact Assistance Grants) to the Office of Refugee Resettlement, of which $25 million shall be used for the voluntary agency matching grants program and $25 million shall be used for state-administered refugee resettlement programs.
- Transfers $50 million in SLIAG funds to the Department of State for the Emergency Refugee and Migration Assistance Fund to cover admissions and placement costs.
- Restores the money "borrowed" from SLIAG by amending the Immigration Reform and Control Act of 1986 to appropriate an additional $100 million in FY 91.
- Appropriates $10 million for each of fiscal years 1990 and 1990 to fund activities directed against employer sanctions-related discrimination, and expands the use of SLIAG funds to include employment training, public education and outreach.

Sen. Edward M. KENNEDY (D-Mass.) and Sen. Robert W. KASTEN, Jr. (R-Wis.): S. 489

- Transfers $50 million in SLIAG funds to ORR to cover domestic resettlement costs for 25,000 additional Soviet Jews and other refugees admitted in FY 89.
- Transfers $150 million in SLIAG funds to the Department of State for the Emergency Refugee and Migration Assistance Fund. Although the bill is not specific, it is expected that $100 million would cover admissions and placement costs, and the remainder would be made available for emergency relief and assistance to refugees overseas.

Rep. Robert K. DORNAN (R-Calif.): H.R. 852

- Requires that 6,500 refugee admissions numbers be added to the FY 89 ceiling, with 5,000 numbers allocated to the Orderly Departure Program, 1,000 to East Asia, First Asylum, and 500 to the Near East/South Asia.

Vietnamese The final version of H.R. 2022 also includes a provision for the designation of "categories of aliens who are or were targets of persecution in Indochina," which was not included in earlier drafts. Although no mention is made of specific groups in the Morrison bill, a Lautenberg press release identified "those registered with the U.S. Orderly Departure Program in Vietnam" as members of a group for whom persecution should be presumed.

In his testimony, Nelson noted that in February INS began to adjudicate ODP refugee applications in Vietnam according to the same worldwide standard that had been applied in Rome in October 1988 and in Moscow in January 1989. As with Soviet applicants, Vietnamese who were rejected for admission as refugees have been offered parole.

In February, INS refugee denial rates jumped to 76 percent, compared to only 6 percent the month before. The rejection rate reached 80 percent in March.

Since the U.S. ODP program began in 1979, more than 80,000 Vietnamese have migrated legally and directly to the United States. According to U.S. program regulations, applicants who qualify for immigrant visas are required to depart as immigrants, and more than 20,000 have done so in the last decade.

The ODP refugee track, historically, has been reserved for people who fall into one of three categories. Category One is for family reunification cases who are not currently eligible for immigration visas. Category Two is for former employees of the U.S. government, U.S. foundations, voluntary agencies, or business firms. Category Three includes political prisoners, Amerasians, former civil servants and military officials of the government of South Vietnam, and persons educated in the United States.

Previously, individuals who could meet the objective criteria for a particular category were presumed to have a well-founded fear of persecution and approved for admission as a refugee. Since February, an INS official has confirmed, Category Two and Category Three cases continue to be approved for refugee status, but Category One cases generally are now offered parole instead.

In February, INS officials interviewed 1,990 applicants for family reunification, of whom 1,241 were approved for entry as immigrants. The remaining 749 Category One cases were interviewed for refugee status, of whom 198 were approved and 551 denied.

"Persons applying in the Orderly Departure Program have waited years for a chance to leave Vietnam," LIRS Washington representative John Fredricksson said. "Many have applied to leave based on an implicit, if not explicit, invitation by the U.S. Embassy in Bangkok in the form of a Letter of Introduction (LOI). These persons, when rejected, will be forced to stay in Vietnam or... to leave by the laborious and delaying process of humanitarian parole."

Administration Seeks $100 Million Supplemental On March 24, President Bush submitted a request to Congress for FY 89 supplemental appropriations, which includes $85 million for refugee admissions and resettlement and $15 million for new refugee assistance needs in Africa and Southeast Asia.

The supplemental would permit the Department of State to add 24,500 fully-funded admissions numbers to the Eastern Europe/Soviet Union region (see chart on page 5). In addition, the government would be able to restore 3,500 numbers to the Southeast Asian program and 500 Near East/South Asian numbers that were removed last December to accommodate increased Soviet flows.

Of the $15 million in refugee assistance, $11.5 million will go to the UN High Commissioner for Refugees and the International Committee of the Red Cross to serve refugees in Africa, where the total refugee population has increased by at least 800,000 people in the last year. The remaining $3.5 million will cover additional care and maintenance costs for Vietnamese in Hong Kong, as well as education and security programs for displaced Cambodians on the Thai-Cambodian border.

Morrison said that the supplemental would be considered on the floor of the House some time during the last week of April. He would not predict any dates for a Senate vote, but said, "I anticipate that we will have the new numbers by May."

Morrison took issue with the Administration's decision not to seek supplemental funding for the Office of Refugee Resettlement. Instead, it is contemplating a re-

programming of funds within the existing appropriation for Refugee and Entrant Assistance.

According to Catherine Bertini, acting assistant secretary for Family Support in the Department of Health and Human Services, the reprogramming will move $21.9 million from the budget line item for federally-subsidized, state-administered cash and medical assistance programs and state administrative costs. The money will be shifted to the voluntary agency matching grant program.

Such a reprogramming of funds, Bertini estimated, would reduce the period of federal reimbursement to states for refugee cash and medical assistance costs from 24 months to about 18 months.

"I feel strongly that this shifting of additional burden to the states is the wrong way to go," Morrison wrote in a letter to HHS Secretary Louis Sullivan. "I hope that the Department will reconsider this ill-advised proposal and, in any case, take no interim steps to implement it until the Congress has had an opportunity to assess the budgetary impact of the revised refugee ceilings."

Recent Developments

INS DRAFTS LEGISLATION TO BLOCK ASYLUM SEEKERS AT PORTS OF ENTRY

The Immigration and Naturalization Service has drafted a bill that, if enacted, would enable immigration officers to exclude asylum seekers from entering the country based on a series of "credibility" considerations. An asylum seeker would first have to satisfy an immigration officer that he or she did not have access to a refugee camp or other safe haven between the country of origin and the United States, or that U.S. diplomatic posts were unavailable overseas to file an application for refugee resettlement to the United States.

The measure, the "Asylum Anti-Abuse Act of 1989," was written at the request of the Attorney General and is now under review in the Department of Justice.

Under the draft legislation, those who would pass the credibility hurdle would also need to be legally present in the United States in order to be granted an asylum hearing with an immigration officer. Undocumented aliens would only be able to apply for asylum in the course of deportation or exclusion proceedings before immigration judges in the Executive Office of Immigration Review (EOIR), a separate agency within the Justice Department.

In order to apply for asylum, however, such undocumented aliens would be required to file a notice of intent to apply within 14 days of being served notice of the deportation or exclusion proceedings.

For those found both credible and legally present, an "informal, nonadversarial hearing" would be held with an immigration officer. According to the draft bill, the immigration officer's determination "shall be final and shall not be subject to further administrative appeal or review."

Asylum seekers would be permitted to have legal counsel "at no expense and no delay to the government" with the proviso that "Counsel may advise the alien during the interview but shall not otherwise participate."

INS Bill Would Replace "Well-Founded Fear" Standard for Asylum with Harsher "Clear Probability" Standard The draft bill would also amend the Refugee Act by eliminating the "well-founded fear of persecution" as the standard for determining asylum, and, in its place, put the burden of proof on the asylum seeker to establish a "clear probability" that deportation to a country would result in the alien's life or freedom being threatened.

The "well-founded fear of persecution" standard was affirmed by the U.S. Supreme Court in its landmark Cardoza-Fonseca decision of March 1987. Writing for the majority, Associate Justice John Paul Stevens rejected the "clear probability" standard for asylum, saying, "There is simply no room in the United Nations' definition for concluding that because an applicant only has a 10 percent chance of being shot, tortured, or otherwise persecuted, that he or she has no 'well-founded fear' of the event happening."

Critics Call Proposal "Beyond the Pale" Arthur Helton, director of the Political Asylum Project of the Lawyers Committee for Human Rights, told Refugee Reports, "This measure is so beyond the pale, it undercuts

so totally the humanitarian standards of asylum, that it doesn't deserve to be on the table of discussion."

Helton said that the draft bill would violate due process and "eviscerate refugee protection in the United States." He charged that "unreviewable, brief border encounters could result in the rejection on any number of grounds not related to the merits" of the asylum claim.

Roger Winter, director of the U.S. Committee for Refugees, also criticized the proposed credibility criteria for excluding asylum seekers from having their claims heard. "Some of the most compelling asylum claimants coming to our country--especially those from Central American and Haiti--have never been given a real opportunity to apply for refugee resettlement from outside our borders."

Winter said, "To require them to do so now in the absence of any record of good faith efforts by the United States to consider their refugee claims in the past amounts to a hypocritical shirking of responsibility on the part of our government to protect refugees in our own part of the world."

Henry Curry, director of the Asylum Policy and Review Unit in the Justice Department, told Refugee Reports that the draft legislation is "still an internal document" in the Justice Department. He said that his unit "had extensive comments" on it.

HAITIAN INTERDICTIONS HIT RECORD HIGH, INS FACILITY AT KROME SWELLS WITH HAITIANS

At a time when Haiti has been experiencing a sharp escalation in violence and political unrest, the largest monthly totals ever are being recorded in the number of Haitians being interdicted by the U.S. Coast Guard.

In March, 1,535 Haitians in 17 vessels were interdicted and returned to Haiti, the largest monthly total in the eight-year history of the interdiction program.

As of April 20, the number of Haitians interdicted so far in 1989 is 2,373. An Immigration and Naturalization Service (INS) spokesman attributed the sharp increase to "false rumors" in Haiti "that the Bush administration would allow everyone to stay here who arrived within a 90-day period." The INS spokesman said, "Obviously, someone confused the issues when there was so much publicity about the Nicaraguans."

The same INS spokesman said that the situation is different now with the abortive coup attempts in Haiti. He said that a couple of planes have recently been hijacked by soldiers and that "hundreds of military personnel with weapons are missing." He indicated that the Coast Guard and the INS are now on particular alert for armed Haitian soldiers attempting to flee to the United States.

Although the increase in Haitians attempting to flee their homeland this spring has been especially sharp, there has also been a steady annual increase in Haitians interdicted since the program began in 1981. The total interdicted in 1988, 4,712, represents a 33 percent increase over the 1987 number of 3,541.

Virtually all interdicted Haitians are returned directly to Haiti following brief immigration hearings aboard the Coast Guard vessels. Since 1981, only 6 Haitians out of a total of the 20,421 interdicted have been brought to U.S. shores to pursue their asylum claims.

Those who evade the Coast Guard and reach U.S. territory, or who arrive by air, have a better chance of applying for asylum, but still only a remote chance of actually being granted asylum. Of the 1,749 cases that have been decided by INS district directors from June 1983 through September 1988, only 2 percent have been approved. Nevertheless, larger numbers than usual have managed recently either to elude the Coast Guard and reach the Florida shores or enter the United States by air.

Apprehensions of undocumented Haitians arriving at Miami International Airport have been increasing at a fast pace. From a total of 345 in FY 87 attempting to enter the United States, and 38 caught transiting through Miami without visas, apprehensions rose to 614 in FY 88, and 83 transiting without visas. Thus far, halfway through FY 89, Haitian apprehensions at Miami International have risen to 843, and 123 transiting without visas.

Krome Detention Center Overcrowded with New Arrivals from Haiti--Refugee Reports on the Scene On April 10, a 55-foot wooden boat was stopped by the Coast Guard about 100

Haitians whose boat was intercepted just 100 yards off the coast of Miami on April 10, 1989, are seen above at the Krome North detention center as they are taken from the health unit to the administration building for further processing. Newly arrived detainees are issued regulation uniforms (fluorescent orange in color), informed about the facility's rules and regulations, and given medical examinations as part of their processing. *Photo credit: USCR/Hiram A. Ruiz*

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yards from the Miami shore. Clearly within U.S. territorial waters, the Haitians were brought ashore and taken to the Krome North Service Processing Center, an Immigration and Naturalization Service (INS) detention center located on the edge of the Florida Everglades.

As a result, the number of persons detained at Krome, 748 on April 11, exceeded the 525-person capacity of the facility by 223 persons. About 550 of the detainees were Haitians.

Further complicating the Krome situation was a major fire in the Everglades, coming within a mile of the facility, that cast a smoky pall over the entire city of Miami.

Refugee Reports arrived on the scene as the INS staff was preparing to evacuate the facility. The visit, scheduled in advance, went forward despite the unusual circumstances of the day. Through the smoke, Refugee Reports toured Krome, seeing some of the new arrivals. They had been changed into the bright orange jumpsuits common to INS detention facilities and could be observed in various stages of processing. Some were still undergoing medical screening. Others could be seen sleeping on pallets set up to accommodate the overflow.

The guard accompanying Refugee Reports did not speak Creole. In fact, the director of the facility said that only about 5 percent of the personnel there speak Creole.

No English-speaking Haitians were encountered. One Haitian approached Refugee Reports speaking in Creole. The only words that could be clearly understood were "Liberte, Liberte."

April 11 was an unusual day in Krome's history. Within several hours of the Refugee Reports visit, the facility was empty, and the detainees bused to Bobby Maduro stadium in Miami, the very place the City had used as a temporary shelter for Nicaraguan asylum seekers in January. It would be reasonable to infer that recreational activities were curtailed in preparation for the

evacuation, and that detainees were being confined more closely than usual.

Although the level of activity in the administrative offices and outside the facility seemed to be heightened as a result of the preparations for evacuation, the detainees appeared unaware of any unusual activity. Lunch was being prepared by detainees at a relaxed pace, medical screening seemed to be proceeding normally, and the general atmosphere felt routine.

During the Refugee Reports visit, most of the detainees were to be found sitting on their cots doing nothing. There was no activity in the recreational yards. None of the detainees in the barracks were seen to have any educational or recreational materials, except for one group of men who appeared to be playing a card game, and a group of women who were watching the television in their barracks. Ping pong tables and exercise equipment stood empty. A bank of telephones in the men's barracks was blocked off by a chain-link fence, which was padlocked. Times for telephone use were posted on the locked door of the fence. At the time of the visit, shortly after 11:00 a.m., the schedule indicated that the phones should have been available. However, they were locked and inaccessible to the detainees.

Krome Center Administrator Constance K. Weiss told Refugee Reports that detainees usually spend most of the day in the recreation yard, and that Krome features classes and recreational programs. She said that Krome detains neither family groups nor minors, and that all of the detainees are administrative, rather than criminal, cases.

She said that Haitians generally comprise about half of the total population, the remainder made up mostly of South and Central Americans. She said that the average length of stay is 3-to-4 weeks, with the quickest turn-around being one week and the longest length of stay being 8 months. An average of 450 detainees are housed at Krome at any one time.

Treatment of Haitians Angers Blacks, Haitians in Florida "What angers people here," said Gerard Jean-Juste, director of the Haitian Refugee Center, "is the flagrantly racist treatment of Haitians." As an example, he cited the interdiction on January 30 of a boat caught 7 miles offshore. Its 149 passengers, including children and pregnant women, were ordered back to Haiti at a time when the city of Miami government "was lobbying to get hundreds of Nicaraguans here," according to Jean-Juste.

Dade County Commissioner Barbara M. Carey, co-chair of the Immigration Advisory Committee for Dade County, told Refugee Reports, "The black and Haitian communities see the treatment of Haitians as totally unfair and unjust." Carey, one of Miami's leading black politicians, said, "There are very strained relations between ethnic communities right now. We feel that our government hasn't dealt fairly with black Americans or people from black countries."

Carey said that the immigration law needs to be applied fairly and equitably to all groups. "Don't make artificial distinctions," she said.

INS Denies Policies are Racially Motivated Perry Rivkind, INS district director in Miami, countering claims that INS policy discriminates against blacks, told Refugee Reports, "About 40 percent of the Mariel Cubans were black." He said that interdicted Cubans are brought ashore and released from detention "because it is a national policy." He pointed out that Cubans cannot be deported because there is no agreement with Castro to take them back.

Carey said that in the case of the Haitians, "the United States made an agreement with a dictator to interdict and return them." She said, "They're violating the Haitians' civil rights. The United States should unilaterally break that treaty."

Legislation Proposed to Bring Interdicted Haitians to U.S. Territory On February 2, Rep. Claude Pepper (D-Fla.) introduced a bill (H.R. 1164) that would grant aliens captured at sea while attempting to enter the United States the same procedural asylum rights accorded those who enter the United States by land.

Pepper announced that he was introducing the bill "to correct this disparity in the treatment of immigrants." He said, "All persons would have the opportunity on the land...to make their claims for immunity on the ground that they could not safely return to their homeland."

The Pepper bill would require the Coast Guard to transport any aliens it apprehends

to an appropriate port of entry for an interview by an immigration officer to determine their right to enter the United States. Pepper said that the current procedure has given rise to the suspicion that would-be immigrants coming in by ship, who are mostly black, are discriminated against.

Where Does U.S. Territory End? Under U.S. immigration laws, an alien's rights improve dramatically if he is apprehended within the United States, as opposed to a border, or, even worse, in international waters. On March 24, a sailboat carrying 101 Haitians was stopped by the Coast Guard 3.18 miles offshore, a mere 365 yards outside the three-mile limit. A patrol boat reportedly towed the 50-foot sailboat in circles for more than two hours while a Coast Guard helicopter used radar and radio transmissions to determine the exact location. Coast Guard Lt. Jeff Karonis told The Miami Herald, "Had the Haitians made it to within three miles, they would have technically entered the United States and would have been brought in to shore and turned over to the Immigration and Naturalization Service." As it turned out, the Herald reported, "After a series of one-to-five-minute immigration hearings, the 99 people left aboard the sailboat were ruled 'economic refugees'--not eligible for political asylum--and were transferred to the Coast Guard cutter Escape for the return trip to the Haitian capital." Two of the Haitians, suffering from severe dehydration, were taken to Memorial Hospital in Hollywood, Florida, the Herald reported.

At the time, the Haitian Refugee Center questioned the accuracy of the determina-

Krome North was already near capacity before the April 10 detention of 261 Haitians. Refugee Reports staff writers, on a site visit to the Krome facility April 11, saw the temporary dormitory (pictured above) which was set up to accommodate the new arrivals.

Although the majority of detainees at any given point in time are Haitian, only 5 percent of the staff at the Krome facility speak Creole, the Haitians' language.

Photo credit: USCR/Hiram A. Ruiz

tion of distance from shore, and argued that "given the boat's close proximity to shore, those on board should be given the opportunity to land."

The issue has become further inflamed, however, by the question of where U.S. territorial waters, in fact, end. A Presidential Proclamation on December 27 extended U.S. territorial waters from 3 to 12 miles, a fact which the Haitian Refugee Center has been trying to apply to the interdiction procedures.

An INS spokesman said that the proclamation has no impact on immigration law. He said that INA 287(a)(3) gives authority to continue interdicting those outside the 3-mile limit. However, that section of the immigration statute only gives immigration authorities the authorization to board "any vessel within the territorial waters of the United States" to search for aliens; it does not specify what those territorial waters are.

HAITIAN EXCLUSION HEARINGS AT KROME

The following is an extract taken from a transcript of exclusion proceedings on October 18 before an Immigration Judge at the Krome facility:

After opening the proceedings, the Judge asks the respondent if she was able to find a lawyer. She says, "No, Your Honor, I don't have an attorney. God is my lawyer." The first series of questions focuses on the passport in another person's name which she used to enter the United States. *We pick up the verbatim transcript at this point.*

Immigration Judge (IJ): Have you ever had any good immigrant visa in your own name?
Respondent (R): No, first time.
IJ: What is the problem you had down there?
R: The problem started on [DATE], my husband and I we were inside of our house when I heard knocking on the door. When we opened the door it was three men behind the door they had mafia glasses and wearing uniform, wearing green uniform.
IJ: What do you think would happen if you had to go back to Haiti now?
R: God only knows.
IJ: Well what did these men want, they want to just talk to you or what did they want?
R: All I could tell you they wanted to get money from us, when they asked us for money we said that we were poor people we didn't have any money, they took my husband away I was pregnant, three months pregnant at that time.
IJ: Well ma'am if you didn't have any money to give them how did you get the money to pay for this, this fake passport?
R: Judge, Judge that happened after. I was pregnant three months pregnant when I was crying asking them to leave my husband alone some of, one of them, kicked me in the belly and I lost the kid.
IJ: But you didn't answer my question, you say that you were too poor to pay these men off but you managed to pay for, for this passport, right?
R: The way that I raised that money I borrowed it here, I asked accounts on other places, make a little sale here that's the way I raised that money.
IJ: Why did you feel you had to leave Haiti?
R: Because of that my mother was suffering of hypertension, hypertension and she died.
IJ: But still why, if your mother died why did you have to leave Haiti?
R: When like I told you I was kicked in the belly and I lost the girl unfortunately but I spent time in the hospital but meantime people were looking for the whereabout of my husband up to now I don't know what happened to him because I never had any news from him from the day they take him, took him away from the house and my mother was living with us at that time she died following that incident in July.
IJ: But I still, I still don't understand even with all that why did you feel you had to leave your country?
R: I was upset because from the time that they took my husband away I went to Forde Marsh [sic--Fort Dimarche], I went to the general hospital, I went all over I couldn't get my husband, know his whereabouts so I was upset.
JUDGE TO INS TRIAL ATTORNEY: Well, this could go on all day, I find that she hasn't established a claim to political asylum or 243 (h) relief. I'm entering an order of exclusion and deportation. She has made no allusions whatsoever to any possible problem which might give rise to

applications under Sections 208 or 243 (h).

JUDGE TO RESPONDENT: Ma'am I cannot let you into the United States using someone else's passport. I'm going to have to enter an order that you be returned back to your own country. The reasons that you have given me do not give me the right or the power to overlook your bad documents.
R: I gave you the reason if you want I could show you the marks on my belly where I was kicked.
IJ: I keep asking you why you had to leave your country and all you talk about is things that happened to you there but you don't relate those things to the need to leave.
R: Like I told you, Your Honor, my husband was arrested.
IJ: Right, and so your husband cannot provide for you anymore and you have to come here in order to earn a living, is that correct?
R: Too much for me I don't have any help, God is only my help.
IJ: Well, what do you think you're going to do here in the United States that you didn't do down there?
R: Your Honor, as long as I could work here.
IJ: Okay, I, I, I understand that ma'am and, and I, you know I sympathize with you, but the reasons that you have given under our law does not allow me to let you stay here. Now you have a right to appeal my decision to a higher court if you wish to do so. If you would like to appeal I'll give you the forms and tell you how to go about filling those out to file your appeal, you could also tell me now however, that you don't wish to appeal, if you do that you accept my decision as final and arrangements will be made immediately for your return to Haiti.
R: What about the paper you told me about?
IJ: Okay, you want to file the appeal form. Here are the papers, you will have until October 28 to fill them out and return them to the Immigration Court. Now if you don't get those in on time my decision then becomes final and the Immigration Service will send you back. If you file your papers on time and put down reasons there why you think my decision is wrong you'll be continued to be held here at Krome and a higher court will review this. It will take about four months. The other..the other..the other..
R: Is it in English?
IJ: You will not have to be there personally. All they will do is review the tape that we're making here and will decide whether or not based on what happened here whether my decision was right.
INTERPRETER TO JUDGE: She had a question, Your Honor, if that is in English those documents that we filled out?
IJ: Oh, she should get somebody here at Krome that speaks Creole to help her fill them out, or she can continue her efforts to get a lawyer.
JUDGE TO INS TRIAL ATTORNEY: The Service waives appeal?
ATTORNEY: Yes, Your Honor.
IJ: This case is concluded, appeal is reserved to October 28.

INS DEPORTS GUATEMALAN AGAINST JUDGE'S ORDER

On April 6, 1989, INS officials in south Texas deported Efrain Martinez Cabrera, a Guatemalan who had been ordered released by visiting Immigration Judge Charles Auslander, of the Executive Office for Immigration Review (EOIR).

The incident began on April 5, when Cabrera was brought before Judge Auslander in a courtroom adjacent to the Immigration and Naturalization Service (INS) Service Processing Center at Port Isabel. The court did not have a case file on Mr. Cabrera, and INS could not produce one. Auslander therefore ordered Cabrera released. After the INS indicated that they would appeal the ruling, Auslander directed Cabrera to meet with a representative of Projecto Libertad--an agency that offers legal help to Central Americans--who was present in the court.

According to the Projecto Libertad representative, Robert Koulish, Auslander asked him to "meet with Cabrera and to explain to him what his rights were and what forms of relief were now available to him." Koulish had barely taken Cabrera's name and particulars, when INS District Council Mike Ochoa "walked over to me and asked if I was a lawyer and if I had a G-28 present with me." When Koulish replied that he was not a lawyer and did not have the form, Ochoa "took Mr. Cabrera and physically

moved him to the back of the courtroom and had him re-detained."

"At that point," adds Koulish, "I asked Judge Auslander if Mr. Ochoa could do that, and he said 'No'. The judge then ordered Mr. Ochoa to return Mr. Cabrera to where I was standing, and Mr. Ochoa refused to comply with the order."

Auslander told the Valley Morning Star that, later that day, after he was informed that Projecto Libertad attorney Mark Schneider had agreed to represent Cabrera, he "reopened the case and vacated the order of deportation."

"As of 3 p.m. Wednesday [April 5]," Auslander added, "the deportation order no longer existed." Auslander cancelled all further hearings scheduled for that day and reported what happened to EOIR's Chief Immigration Judge in Washington, Judge William Robie.

Projecto Libertad lawyers Schneider and Jacqueline Schoonheim made numerous phone calls to INS trying to get information on Cabrera's whereabouts, but, according to Koulish, "the INS would not respond to any of the inquiries."

Late that day, Ochoa telephoned Schneider and informed him that Cabrera would be deported at 5:00 a.m. the following morning, despite the fact that INS regulations state that lawyers should be given 24-hours notice when their clients are to be deported.

According to Virginia Kice, INS public affairs specialist in Harlingen, Cabrera's appearance before Auslander on April 5 had been due to a clerical error. Kice says that Cabrera had in fact previously appeared before Auslander, who had made an order for deportation. Based on that previous order, INS proceeded to arrange Cabrera's deportation to Guatemala, which took place on the afternoon of Thursday, April 6, 1989. "We contend that Mr. Cabrera was legally deported," says Kice.

EOIR has not taken any action on the incident. According to Gerald S. Hurwitz, counsel to the EOIR director, "Judge Robie's office was made aware of the situation." However, Hurwutz said that "there was no formal complaint lodged."

Kice says that INS has filed an appeal of Judge Auslander's motion to reopen the case and has asked that the appeal be expedited.

Update

° From April 17 to 27, an estimated 4,000 Cambodians who have been living in Khao I Dang in an illegal status will be moved by Thai authorities to Ban Thad, adjacent to Site 2 on the Thai-Cambodian border, according to Jim Anderson, director of the Thailand program for the International Rescue Committee.

° On March 31, the Thai government closed a repatriation center in Tak Province for Burmese refugees who had fled across the border to escape persecution at the hands of Burma's military government, according to Thai press accounts. Starting on April 1, any remaining Burmese students in Thailand would be considered illegal immigrants and subject to Thai immigration laws.

Thailand established the Tak center last December to facilitate repatriation of Burmese and, according to Thai officials, a total of 387 were returned voluntarily to Burma. Several groups, including Amnesty International and the Student Federation of Thailand (SFT), have reported that some of the Burmese were sent back against their will and subsequently arrested by Burmese authorities.

At an April 2 press conference, SFT executive committee member Porameth Phuti urged the Thai government to allow Burmese students to be granted asylum in Thailand until general elections are held--as the Saw Maung regime has promised--in May 1990.

Thai officials estimate that there are about 200 Burmese taking refuge inside Thailand and about 3,000 more along the border in areas controlled by ethnic minorities engaged in their own conflict with the Burmese government. Private sources report somewhat higher figures for both groups.

° A federal appeals court upheld the convictions of eight people in the Tucson sanctuary trial on charges of conspiracy and harboring and transporting undocumented aliens. In a 3-to-0 decision, the U.S. Court of Appeals for the Ninth Circuit ruled on March 30 that the religious beliefs of

the eight were not relevant to their defense.

° According to a memorandum from the Immigration and Naturalization Service's Central Office to all field offices, State Department advisory opinion "sticker" responses on asylum claims saying that the State Department has no specific factual information about the applicant "are not to be construed to be negative opinions or to constitute adverse evidence which must be made known to applicants prior to the denial of an application." The INS cable (file CO 208-P) says that in "sticker" response cases, the INS district offices should "move directly to a decision." Decisions in such asylum cases, said the memorandum, "are to be based upon the interview and any evidence submitted plus knowledge of country conditions found in the above country reports and other references which may be available."

At an oversight hearing in March, Rep. Bruce A. Morrison, chairman of the House Subcommittee on Immigration, Refugees, and International Law, characterized the State Department "sticker" responses to asylum applications as a "travesty of justice." (See Refugee Reports, Vol. X, No. 3.)

° The INS is plagued by sloppy management and accounting, according to an audit ordered by Attorney General Dick Thornburgh. Growing backlogs of case adjudications, millions of dollars in unnecessary overtime costs, and inconsistent policy implementation were some of the problems found. The backlog of case adjudications increased from 325,000 at the beginning of FY 87 to 408,000 at the end of FY 88, although total applications received during that time had only increased by 5,000, from 1.964 million to 1.969 million. The report noted wide discrepancies in denial rates for legalization benefits by INS offices within the same district.

INS Commissioner Alan C. Nelson said that the audit "was merely a list of exceptions which made no effort to look at the overall effectiveness of INS programs." However, Thornburgh's December 30 memo ordering the audit called for it to "cover the full range of financial and programmatic activities." In a March 2 memorandum to Thornburgh, Nelson said that the audit's list of "perceived problems...absolutely fails to present any perspective."

The leaking of the audit has been seen in Washington as part of building pressure to replace Nelson. "If the President or Attorney General wanted me out," Nelson said in a March 14 New York Times story, "it's very easy. They don't need to go through these oblique approaches."

Thornburgh told the Times, "We're undertaking a review of all positions in the department with regard to how those positions will be filled."

Resources

THE MORE THINGS CHANGE...HUMAN RIGHTS IN HAITI

The four military-dominated governments that have ruled Haiti since the fall of the Duvalier dictatorship have displayed a disturbing consistency in their willingness to direct and countenance violence and intimidation against political opponents, according to a February 1989 report issued by Americas Watch, the National Coalition for Haitian Refugees, and Caribbean Rights.

The More Things Change... Human Rights in Haiti concludes that the current military government of Lt. Gen. Prosper Avril, while vowing to hold elections and promote human rights, has continued the abusive practices of its predecessors. The 159-page report charges that Avril "has halted significant efforts to disband the paramilitary forces that have been behind the most violent episodes in Haiti's recent past," as well as reinstating army officers known for their violence and corruption. "He has countenanced violence against critics and popular organizations," says the report, "increasingly suggesting an intention to maintain military control of any future elected government."

The More Things Change... is available for $10 from Human Rights Watch, 36 W. 44th St., New York, NY 10036 or The National Coalition for Haitian Refugees, 275 Seventh Avenue, New York, NY 10001.

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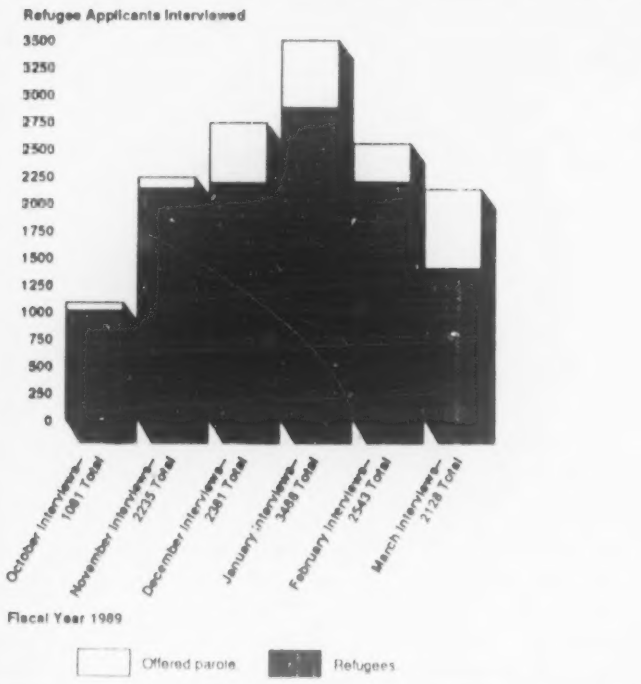

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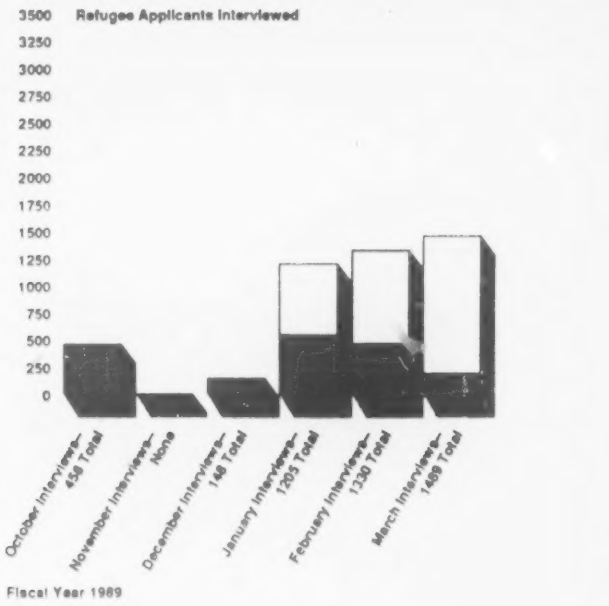

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